

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1943 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

S G MACWANA OR HIS SUCCESSOR

Versus

STATE OF GUJARAT

Appearance:

MRS KETTY A MEHTA for Petitioners
MR BY MANKAD, AGP for Respondent No. 1
M/S PATEL ADVOCATES for Respondent No. 2, 3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 13/10/2000

ORAL JUDGEMENT

1. Heard Ms. Ketty Mehta, learned counsel for the petitioners and Mr. Mankad, learned AGP for respondents.

2. The petitioner No.1 has raised the cause in capacity of General Secretary of the Union representing the employees serving with the Government Photo Registry, Ahmedabad. The petitioner No.2 is the employee, for whom this petition is preferred. Both the petitioners have invoked the jurisdiction of this Court under Article 226 of the Constitution of India and have prayed that the order of the respondent - State of Gujarat [Revenue Department], dated 17th December 1991 [Annexure 'F'] be declared as illegal, ultra vires and bad in law. It is also prayed that appropriate writ, order or direction be issued to the effect that the amendment order dated 25th February 1992 passed by the Manager, Government Photo Registry, Ahmedabad is illegal, ultra vires and void in law. The petitioners have also prayed for a writ of mandamus and directions to grant the pay scale of foreman of Government Photo Registry to Rs.1640 - 2900 or Rs.1600 - 2660 on parity with the relevant pay scales of the Head Photographer / Head Draftsman / Draftsman Overseers working with the Government Photo Litho Press. Rest of the reliefs prayed by the petitioners are consequential.

3. Learned counsel appearing for the petitioner Ms. Mehta has taken me through the entire averments made in relevant parts of the petition, and has submitted that the Manager of Government Photo Litho Registry fixed the pay of the petitioner no.2 w.e.f. 1st January 1986 as Head Enlarger in the new pay scale of Rs. 1350 - 50 1400 - 40 - 1800 - EB - 50 - 2200, and actual pay was fixed at Rs.1560 as on that date. The petitioner No.2 was thereafter promoted w.e.f. 13th February 1986. It is contended that if the old pay scale is taken as Rs.475 750, as directed by the Labour Court, Ahmedabad, the revised pay scale would be in the pay scale of Rs.1400 40 - 1600 - 50 - 2300 - EB - 60 - 2600. Accordingly, the pay was fixed, but the same was subject to the concurrence of the audit party. According to the petitioners, the petitioner No.2 as a Foreman was given the proper pay scale as revised by the State Government, looking to the old pay scale fixed by the Labour Court, but the Revenue Department of the State of Gujarat by its order dated 7th December 1991, directed that the old pay scale according to the Third Pay Commission of a Foreman working in the Government Photo Registry was Rs.380 - 640. Therefore, the pay of the petitioner should be fixed accordingly.

4. It is not a matter of dispute that the pay scale

of foreman was fixed at Rs. 475 - 750 w.e.f. 1st January 1979 and the Labour Department of the State of Gujarat issued notification accordingly on 4th July 1987. This scale was fixed while deciding the industrial dispute raised in the reference before the Labour court, of course the same was fixed on two conditions. The Manager of Government Photo Litho Registry passed an order dated 25th February 1992 and amended the earlier order dated 17th June 1987 because of the Government order dated 7th December 1991. The pay scale, because of the order dated 25th February 1992, was reduced as shown in para 5 of the petition. After going through the award passed in Reference [LCA - D] No.3 of 1981 between the Government Photo Litho Press and Government Photo Registry, Ahmedabad and Secretary, Government Photo Litho Registry Employees Union, Ahmedabad, I am convinced that the grievance agitated by the petitioners is genuine and the orders passed by the Manager of Government Photo Litho Press is not in accordance with law. The petitioner has rightly relied on the relevant portion of the award passed by the Labour Court, wherein the competent authority has decided as under :-

"It is understood that the Photo Registry Unit has been working on the basis of Photo Registry, Pune. The Head Photographer working in the processing section is undisputedly paid the award of pay scale in the grade of Rs.475 - 750. Similarly, the foreman working in the machine section and bind section. Photo Litho Press section given in the grade of Rs.475 - 750 and Head Draftsman working in the Photo Litho Press the award in the grade of Rs.475 - 800."

5. I am not in agreement with the submissions made by the learned AGP - Mr. Mankad that the order of the Labour Court is in persona and the petitioner No.2 was not entitled to the benefit or say claims accepted by the Labour Court. The verdict of the Labour Court had become final, and the same was also implemented by the Government qua one of the foreman serving with the Registry at that relevant time.

6. It is pertinent to note that there is no written resistance by other side and the averments made in the petition on oath has remained uncontroverted. In response to the query raised by the Court, it is submitted that there is only one post of foreman in the Government Photo Registry, at Ahmedabad. It is pointed out by the learned AGP that this point is under consideration by the Pay Anomaly Committee, but according

to me, the same is not relevant because the case of the petitioners stands on a verdict of the competent court. The revision of Pay Rules of the Gujarat Civil Services of the Year 1987 which are at Annexure 'D' [page 31 onwards] also supports the case of the petitioner. After going through the pay scales mentioned at page 35, it is clear that the petitioner could have been granted the appropriate pay scales i.e. scale of Rs.1400 - 2600 which is equivalent to the old scale of Rs.425 - 800. It is not agreeable that the petitioner is entitled to the scale of Rs.1640 - 2900, as prayed. A similarity of the work is also relevant which is specifically pleaded by the petitioners, and therefore, the petition in part, shall have to be allowed.

6. In view of the discussion aforesaid, I do not see any need to go into further discussion. The orders passed by the Revenue Department of the Gujarat Government dated 7th December 1991 at Annexure 'F' and the amendment order dated 25th February 1992 are declared illegal and void, and the same are hereby quashed and set aside. The respondents are directed to issue appropriate orders granting pay scale of Rs.1400 - 2600 w.e.f. 1st January 1986. Of course as the petitioner was promoted in the month of December 1986, the pay should be fixed accordingly. Obviously, the petitioner will be entitled to all consequential benefits and arrears, if payable to the petitioner. The effect of reduction of pay scale automatically goes. Rule to the aforesaid extent is made absolute. Interim relief granted vide order dated 30th March 1992 is hereby made absolute. The petitioner could have been awarded costs, but looking to the facts and circumstances of the case, I am not inclined to award the costs to the petitioners.

7. Mr. Mankad, learned AGP has pointed out that the Office of the Inspector General of Photo Litho Registration has been shifted to Gandhinagar. Therefore, the writ be sent at the following address :

Inspector General of Registration
Gujarat State
Sector No.13
'KH' Road
Gandhinagar

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